

United States District Court
For the Northern District of California

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E-FILED 12-09-2009

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CARLOS PACHECO,
Plaintiff,

v.

HOMEcomings FINANCIAL, LLC and
MORTGAGEIT, INC.,
Defendants.

No. C08-03002 JF (HRL)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT
MORTGAGEIT, INC.'S MOTION TO
COMPEL PRODUCTION OF
DOCUMENTS**

[Re: Docket No. 86]

Plaintiff Carlos Pacheco sues for alleged violations of federal truth-in-lending laws in connection with the refinance of his home mortgage loan. In essence, he seeks rescission, as well as declaratory relief quieting title in his favor. Defendant MortgageIT, Inc. ("MortgageIT") moves to compel the production of documents. Plaintiff opposes the motion. The matter is deemed appropriate for disposition without oral argument, and the December 15, 2009 hearing is vacated. See Civ. L.R. 7-1(b). Upon consideration of the moving and responding papers, the motion is granted in part and denied in part as follows:

Requests 25-28 and 31 seek documents pertaining to plaintiff's refinance, his payments on the loan, and allegations asserted in his First Amended Complaint. Plaintiff agreed to produce all non-privileged responsive documents, but now advises that he has none. MortgageIT's motion as to these requests is granted as follows: Within ten days from the date of this order, plaintiff shall serve (a) updated discovery responses to these requests and


1 (b) a declaration attesting under penalty of perjury that after conducting a diligent inquiry and
2 reasonable search, he has no non-privileged, responsive documents in his possession, custody,
3 or control.

4 Requests 29 and 30 seek documents reflecting plaintiff's use of cashed-out loan
5 proceeds. The motion as to these requests is denied. MortgageIT has not demonstrated that the
6 requested information is relevant or reasonably calculated to lead to the discovery of admissible
7 evidence. FED. R. CIV. P. 26(b)(1).

8 Requests 32-35 seek documents relating to plaintiff's financial condition (e.g. bank
9 statements, credit card statements, and documents reflecting his income and assets). In view of
10 plaintiff's claim seeking rescission, there is no dispute that his ability to tender loan proceeds is
11 at issue. See 15 U.S.C. § 1635(b). Plaintiff concedes that he will have to refinance in order to
12 tender. MortgageIT says that these documents are relevant to evaluate plaintiff's ability obtain
13 refinancing in order to make that tender. Inasmuch as MortgageIT disclaims any interest in the
14 subject loan or the underlying security, however, it is not apparent that the requested
15 information is relevant or reasonably calculated to lead to the discovery of admissible evidence
16 as to MortgageIT. Nevertheless, the operative pleading asserts a claim for rescission as to
17 MortgageIT, and plaintiff has not managed to convince that discovery as to his ability to tender
18 should be entirely deferred. Accordingly, MortgageIT's motion is granted in part as follows:
19 Within ten days from the date of this order, plaintiff shall produce (a) his credit report or
20 authorize the release of his credit report to MortgageIT (to the extent he has not already done so
21 per the parties' prior agreement); (b) the current statement from banks at which he has accounts;
22 and (c) his most recent pay stub. MortgageIT's motion as to these requests is otherwise denied.

23 SO ORDERED.

24 Dated: December 9, 2009



HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

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5:08-cv-03002-JF Notice has been electronically mailed to:
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